

REMARKS

1 The Examiner objected to the Abstract of Disclosure because of the phrase "is
disclosed" in line 1. The Examiner contends that this phrase should be omitted.
5 Applicant has made the changes as set forth above and believes the same overcomes
the Examiner's objection.

10 The Examiner rejected claims 1 and 3-10 under 35 U.S.C. § 103(a) as being
unpatentable over Podjan in view of Lush, U.S. Patent No. 6,073,582. Applicant
respectfully disagrees with the Examiner's proposed combination. There is no
suggestion in either of the references that they may be combined in the manner
15 suggested by the Examiner. Furthermore, even if for argument purposes such a
suggestion exists, such a combination would still fail to teach all of the limitations of the
claims. Independent claim 1 has been amended to specifically recite that each of the
feeder segments include a selective locking structure. The selective locking structure
20 yieldably maintains the feeder body in its extended position. Independent claim 10 has
been amended to recite that each of the feeder segments have a locking structure
associated therewith which yieldably locks the feeder body in its extended position.
Contrary to the Examiner's contention, neither Lush '582 nor Podjan teach this
25 limitation. Lush '582 teaches a collapsible mesh structure that will freely collapse when
not filled and the upper end of the feeder is not being supported by the hanger.
Similarly, Podjan also teaches a freely collapsible structure. Reference numbers 26 and
27 of Podjan are flanges that support one ring upon another in a step-like fashion so
that the rings do not slip past one another. Podjan does not teach or suggest that the

1 feeder segments have a selective locking structure which yieldably maintains the feeder
body in an extended position. The locking structure of the present invention is
advantageous over prior art bird feeders because the feeder can be maintained in an
extended position while being filled. The locking structure also eliminates the problems
associated with feed falling between the rings of the feeder.
5

Regarding claims 3-9 of the present invention, claims 3-9 recite the shape and
composition of the feeder body. Applicant asserts that the limitations of claims 3-9 are
not taught or otherwise suggested by the Examiner's proposed combination.
10 Furthermore, claims 3-9 ultimately depend from independent claim 1. Independent
claim 1 is clearly allowable for the reasons set forth above. Insofar as claims 3-9
ultimately depend from independent claim 1, the same are thought to be allowable.
15 Accordingly, applicant asserts that the Examiner's rejection is in error.

Claims 1-8, 10 and 11 were rejected under 35 U.S.C. § 103(a) as being
15 unpatentable over Lush, U.S. Patent No. 6,427,629, in view of Podjan. There is no
suggestion in either of the references that they may be combined in the manner
suggested by the Examiner. Furthermore, even if for argument purposes such a
suggestion exists, neither of the references teach the structure as specifically recited in
20 the claims. As more fully set forth above, Podjan teaches a set of flanges that do not
yieldably lock the feeder body. Lush '629 fails to teach a locking structure of any sort.
Accordingly, applicant asserts that claims 1 and 10 are allowable over the Examiner's
25 rejection.

1 Regarding claims 2-8 of the present invention, claims 2-8 further describe the
shape and composition of the feeder body segments. The structure recited in claims 2-
8 is not taught or otherwise rendered obvious by the Examiner's cited art. Furthermore,
claims 2-8 depend from independent claim 1. Claim 1 is clearly allowable for the
reasons set forth above and, therefore, applicant asserts that claims 2-8 are allowable
5 for those same reasons.

10 With regard to claim 11 of the present invention, claim 11 recites that the locking
structure includes cooperating locking members on the segments. As stated above,
neither Lush '629 nor Podjan teach a locking structure. The prior art bird feeders do not
have structure to stop them from collapsing during filling. Accordingly, applicant
believes that the Examiner's proposed combination of Lush '629 and Podjan is in error.

15 The Examiner rejected claims 1, 6, 10 and 11 under 35 U.S.C. § 103(a) as being
unpatentable over Runyon in view of Lush '582. There is no suggestion in either of the
references that they may be combined in the manner suggested by the Examiner.
Furthermore, even if for argument purposes such a suggestion exists, neither of the
20 references teach the structure as specifically recited in the claims. Contrary to the
Examiner's argument, Runyon simply does not teach a locking structure that yieldably
maintains the feeder body in an extended position. Runyon teaches that two segments
fit together in a puzzle-like fashion. Runyon actually teaches directly away from a lock
25 structure which yieldably locks a feeder body. Runyon specifically teaches as follows:

25 "Once this slight clearance is achieved, both
members 25, 26, are no longer deformed, and relaxed to
their initial shapes and dimensions. This relaxation allows
for the engagement of beveled flange 38 to respective detent

62 and forces the upper housing member 25 downward (in the direction opposite arrows "z"). The beveled flanges 38 move into alignment with the slats 64, 65, and the movement of the members 25, 26 toward each other ceases at the edge surfaces 44, 76 on the upper and lower housing members 25, 26 abut, such that the apparatus 20 is now at rest and structurally stable."

(Col. 5, lines 18-28). (Emphasis added). Accordingly, Runyon teaches a puzzle-like fit as opposed to a yieldable lock. Therefore, applicant asserts that claims 1 and 10 are clearly allowable over the Examiner's proposed combination of Runyon and Lush '582.

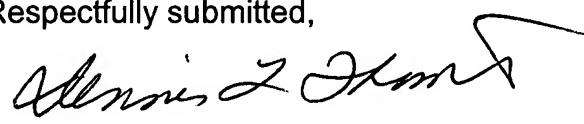
With regard to claim 6 of the present invention, claim 6 recites that the feeder body is comprised of a plastic material. Applicant asserts that the Examiner's cited art does not teach or otherwise suggest the structure. Furthermore, claim 6 depends from independent claim 1. Claim 1 is allowable for the reasons set forth above and, therefore, applicant asserts that claim 6 is also allowable.

Claim 11 recites that the locking structure includes cooperating locking members on the segments. As previously stated, neither Lush '582 nor Runyon teach locking members. Furthermore, claim 11 ultimately depends from independent claim 10. Claim 10 is allowable for the reasons stated above and, therefore, applicant asserts that claim 11 is also allowable.

In light of the above amendments and remarks, applicant asserts that the claims are in condition for allowance. Applicant respectfully requests reconsideration and allowance of the same.

1 No fees or extensions of time are believed to be due in connection with this
amendment; however, please consider this a request for any extension inadvertently
omitted, and charge any additional fees to Deposit Account No. 502093.

5 Respectfully submitted,



DENNIS L. THOMTE
Registration No. 22,497
THOMTE, MAZOUR & NIEBERGALL
Attorneys of Record

10 2120 South 72nd Street - Suite 1111
Omaha, Nebraska 68124
(402) 392-2280

15 CERTIFICATE OF MAILING

I hereby certify that the original of this AMENDMENT for RAYMON W. LUSH,
Serial No. 10/614,947, was mailed by first class mail, postage prepaid, to Mail Stop
Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on
this 14 day of June, 2004.



DENNIS L. THOMTE

20

25